

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED

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2004 JUN 22 P 12:02

KENNETH M. WHITE and
MANDY DIAS,
Plaintiffs

v.

ERIC MADONNA and the
CITY OF FALL RIVER,
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

C.A. # 04-10991-NG

ANSWER AND JURY CLAIM

The defendants, Eric Madonna and the City of Fall River, answer the plaintiffs' complaint as follows.

Introduction

1) The defendants admit the nature of the plaintiffs' claims while denying the truth of the allegations made in support of those claims. The defendants admit that Eric Madonna is a police officer of the City of Fall River.

2) Denied.

Parties

3-5) Admitted.

Facts

6) Admitted.

7) Denied. Kevin Leonardo made an unprovoked attack on Officers Madonna and Smith.

8) The defendants admit that Officers Madonna and Smith were off duty and not in uniform. To the extent the plaintiffs' allegation that Officers Madonna and Smith were "partying" means that they were conversing with their friends, the allegation is admitted. To the extent it means anything else, the allegation is denied.

9) Officers Madonna and Smith subdued and arrested Mr. Leonardo when Mr. Leonardo physically assaulted them.

10) Denied. The plaintiffs were aware that Officers Madonna and Smith were police officers. They nevertheless interfered with lawful arrests.

11-13) Denied.

Count I
42 U.S.C. s. 1983 Against Madonna

14) The defendants incorporate herein their answers to paragraphs 1 through 13 of the plaintiffs' complaint.

15) The defendants admit that the plaintiffs have claimed damages but deny that the plaintiffs are entitled to damages.

Count II
Assault and Battery Against Madonna

16) The defendants incorporate herein their answers to paragraphs 1 through 13 of the plaintiff's complaint.

17-18) Denied.

Count III
False Arrest and Illegal Imprisonment Against Madonna

19) The defendants incorporate herein their answers to paragraphs 1 through 13 of the plaintiffs' complaint.

Count IV
Malicious Prosecution Against Madonna

22) The defendants incorporate herein their answers to paragraphs 1 through 13 of the plaintiffs' complaint.

23) Denied.

Count V
Intentional Infliction of Emotional Distress Against Madonna

24) The defendants incorporate herein their answers to paragraphs 1 through 13 of the plaintiffs' complaint.

25) Denied.

Count VI
42 U.S.C. s. 1983 Against the City of Fall River

26) The defendants incorporate herein their answers to paragraphs 1 through 13 of the plaintiffs' complaint.

27-32) Denied.

Affirmative Defenses

Further answering, the defendants say that they are not liable to the plaintiffs for the following reasons.

1) The plaintiffs' complaint fails to state a claim upon which relief may be granted.

2) The claims against Eric Madonna are barred by the defense of qualified immunity.

3) Eric Madonna's use of force was reasonable and necessary to effect lawful arrests.

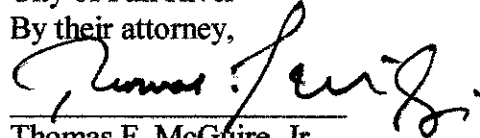
4) Eric Madonna's use of force was justified in self defense.

- 5) Eric Madonna's use of force was justified in the protection of third parties.
- 6) Eric Madonna acted with probable cause to believe the plaintiffs had committed crimes and the plaintiffs' claims are therefore barred by Mass. Gen. Laws c. 231, s. 94A.

Jury Caim

The defendants claim trial by jury on all issues pursuant to Fed.R.Civ.P. 38(b).

The defendants,
Eric Madonna and the
City of Fall River
By their attorney,



Thomas F. McGuire, Jr.
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CERTIFICATE OF SERVICE

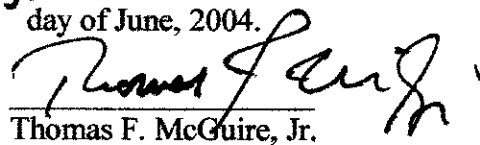
I hereby certify that I have served the attached document on all other parties by mailing copies thereof to the plaintiffs' counsel of record:

Philip N. Beauregard, Esq.
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and

Brian Corey, Jr., Esq.
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Westport, MA 02790

Signed under the penalties of perjury this 21st day of June, 2004.


Thomas F. McGuire, Jr.